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Clerk, U.S. Courts
District Of Montana
Billings Division

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ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,	CR 23-101-BLG-SPW
Plaintiff,	
vs.	PLEA AGREEMENT
ANTHONY JAMES CROSS,	
Defendant.	

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, represented by Zeno Baucus and Jeffrey K. Starnes, Assistant United States Attorneys for the District of Montana, the defendant, Anthony James Cross, and the defendant's attorney, Gillian Gosch, have agreed upon the following:

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1. **Scope:** This plea agreement is between the United States Attorney's Office for the District of Montana and the defendant. It does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority, or the United States Probation Office.

2. **Charges:** Defendant agrees to plead guilty to Count 1 of indictment, which charges Threats to Injure and Murder a United States Senator, in violation of 18 U.S.C. § 115(a)(1)(B) and (b)(4). This offense carries a maximum of ten years imprisonment, a \$250,000 fine, three years of supervised, and a \$100 special assessment.

At the time of sentencing, provided the plea agreement is accepted by the Court, the United States will move to dismiss Count 2 of the indictment against the defendant.

3. **Nature of the Agreement:** The parties agree that this plea agreement will be governed by Rule 11(c)(1)(A) and (B), Federal Rules of Criminal Procedure. The defendant acknowledges that the agreement will be fulfilled provided the United States: a) moves to dismiss Count 2 of the indictment against the defendant and b) makes the recommendations provided below. The defendant understands that if the agreement is accepted by the Court, there will not be an automatic right to withdraw the plea even if the Court does not accept or follow the recommendations made by the United States.

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Agreement as to relevant conduct: the defendant agrees and admits that all conduct reflected in the Indictment shall be considered relevant conduct for purposes of sentencing.

4. Admission of Guilt: The defendant will plead guilty because the defendant is in fact guilty of the charge in Count 2 of the indictment. In pleading guilty, the defendant acknowledges that:

First, the defendant made a threat;

Second, the threat to assault or murder was made against a United States official;

Third, the defendant made the threat with the intent to impede, intimidate, interfere with, or retaliate against that official; and,

Fourth, the defendant made the threat while the United States official was engaged in or on account of the performance of his duties.

Fifth, the defendant acted recklessly in transmitting the threat, that is with a conscious disregard for the substantial and unjustifiable risk that others could regard his statements as threatening violence.

United States officials includes members of Congress.

5. Waiver of Rights by Plea:

(a) The government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement given under oath during the plea colloquy.

(b) The defendant has the right to plead not guilty or to persist in a plea of not guilty.

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(c) The defendant has the right to a jury trial unless, by written waiver, the defendant consents to a non-jury trial. The United States must also consent and the Court must approve a non-jury trial.

(d) The defendant has the right to be represented by counsel and, if necessary, have the Court appoint counsel at trial and at every other stage of these proceedings.

(e) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and the defendant's attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(f) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not the judge was persuaded of the defendant's guilt beyond a reasonable doubt.

(g) At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against the defendant. The

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defendant would be able to confront those government witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence. If the witnesses for the defendant would not appear voluntarily, their appearance could be mandated through the subpoena power of the Court.

(h) At a trial, there is a privilege against self-incrimination so that the defendant could decline to testify and no inference of guilt could be drawn from the refusal to testify. Or the defendant could exercise the choice to testify.

(i) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal the conviction to the Ninth Circuit Court of Appeals for review to determine if any errors were made that would entitle the defendant to reversal of the conviction.

(j) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, Federal Rules of Criminal Procedure. By execution of this agreement, the defendant waives that right and agrees to hold that hearing before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge, if necessary.

(k) If convicted in this matter, a defendant who is not a citizen of the United States may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

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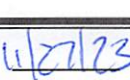
The defendant understands that by pleading guilty pursuant to this agreement, the defendant is waiving all of the rights set forth in this paragraph. The defendant's attorney has explained these rights and the consequences of waiving these rights.

6. Recommendations: The United States will recommend the defendant's offense level be decreased by two levels for acceptance of responsibility, pursuant to USSG §3E1.1(a), unless the defendant is found to have obstructed justice prior to sentencing, pursuant to USSG §3C1.1, or acted in any way inconsistent with acceptance of responsibility. The United States will move for an additional one-level reduction, pursuant to USSG §3E1.1(b), if appropriate under the Guidelines. The defendant agrees that the following special offense characteristic applies for purposes of sentencing: USSG §2A6.1(b)(2).

The parties reserve the right to make any other arguments at the time of sentencing. The defendant understands that the Court is not bound by this recommendation.

7. Sentencing Guidelines: Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

8. Waiver of Appeal of the Sentence – Conditional: The defendant understands the law provides a right to appeal and collaterally attack the sentence

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imposed in this case. 18 U.S.C. § 3742(a); 28 U.S.C. §§ 2241, 2255. By this agreement the defendant waives the right to appeal or collaterally attack the sentence, including the conditions of probation or supervised release, if the sentence imposed is within or below the Guideline range calculated by the Court, regardless of whether the defendant agrees with that range. This waiver includes challenges to the constitutionality of any statute of conviction and arguments the admitted conduct does not fall within any statute of conviction. This waiver does not prohibit the right to pursue a collateral challenge alleging ineffective assistance of counsel.

The defendant also waives the right to appeal any aspect of a sentence imposed below or within the Guideline range upon a revocation of supervised release in this case number, except where the defendant unsuccessfully objects to the grade of violation applied by the court during the district court revocation proceedings. In that event, this waiver does not apply and the defendant may appeal the sentence imposed upon a revocation of supervised release, even if that sentence falls below or within the guideline range calculated by the court.

9. Disclosure of Financial Information: The defendant authorizes the U.S. Probation Office to release to the Financial Litigation Unit of the U.S. Attorney's Office all documents and financial information provided by the defendant to the U.S. Probation Office and any information obtained by the U.S.

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Probation Office about the defendant through its investigation. The defendant further agrees to fully complete a financial statement in the form prescribed by the U.S. Attorney's Office, provide financial documents as requested, and submit to a debtor's exam if deemed appropriate by the U.S. Attorney's Office, in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court. The defendant consents to being immediately placed on the Treasury Offset Program to help meet the defendant's obligation to pay restitution and/or a fine.

10. Voluntary Plea: The defendant and the defendant's attorney acknowledge that no threats, promises, or representations have been made to induce the defendant to plead guilty, and that this agreement is freely and voluntarily endorsed by the parties.

11. FOIA Waiver: The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

12. Detention/Release After Plea: The defendant acknowledges that he will be detained following his change of plea.

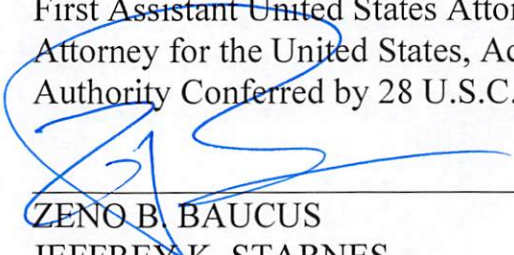
13. Breach: If defendant breaches the terms of this agreement or


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commits any new criminal offenses between signing this agreement and sentencing, the U.S. Attorney's Office is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea.

14. Entire Agreement: Any statements or representations made by the United States, the defendant, or his counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.

TIMOTHY J. RACICOT
First Assistant United States Attorney
Attorney for the United States, Acting under
Authority Conferred by 28 U.S.C. § 515


ZENOB BAUCUS
JEFFREY K. STARNES
Assistant U. S. Attorneys
Date: 11/27/23


ANTHONY JAMES CROSS
Defendant
Date: 11/27/23


GILLIAN GOSCH
Defense Counsel

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AUSA DEF ATTY Date

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